

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DONALD E. MORISKY,

V.

Plaintiff,

MMAS RESEARCH LLC, et al.,

## Defendants.

No. 2:21-CV-1301-RSM-DWC

## **ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge David W. Christel, objections to the Report and Recommendation<sup>1</sup>, and the remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation.
- (2) Plaintiff's Renewed Motion for Sanctions (Dkt. 233) is granted-in-part as follows:

The Court imposes the following sanctions: Defendants' counterclaims are dismissed with prejudice and Defendants are limited in the defenses presented at trial; the destroyed ESI (the license and settlement agreements) are presumed to be unfavorable to Defendants and an adverse jury instruction will be provided to the jury that the destroyed agreements were unfavorable to Defendants; and, at trial, adverse jury instructions will be provided so that any lack of proof should be inferred favorably to Plaintiff based on Defendants' failure to produce discovery.
- (4) Defendants' Motion for Reconsideration, Dkt. #256, filed within Defendants' objections and on the same day as the noting date for the instant Report and Recommendation, thus before any final decision or order, is DENIED as premature and improper.

<sup>1</sup> The Court notes that Defendants' objections, Dkt. #256, were filed beyond the due date of September 3, 2024.

- 1 (3) Plaintiff may move for the Court to impose costs and fees for bringing the motion  
for sanctions.
- 2 (4) This case will proceed immediately to trial.
- 3 (5) The Clerk of Court is directed to terminate the referral to U.S. Magistrate Judge  
Christel.
- 4 (6) The Clerk is directed to send copies of this Order to Plaintiff, counsel for  
Defendants, and to the Hon. David W. Christel.

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8 DATED this 10<sup>th</sup> day of September, 2024.

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12 RICARDO S. MARTINEZ  
13 UNITED STATES DISTRICT JUDGE  
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